LAWRENCE T. LOFTUS ET AL.

IBLA 79-235 Decided December 13, 1979

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer M 42689 (ND) Acq.

Affirmed.

1. Oil and Gas Leases: Applications: Sole Party in Interest

   An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest and, within 15 days of the filing, the offeror fails to submit an accurate statement of his interest and a copy of agreements between him and the other offerors.

2. Oil and Gas Leases: Applications: Drawings

   A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected.

APPEARANCES: Lawrence T. Loftus, James Szilagyi, and Hanley R. Booth, pro sese.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Lawrence T. Loftus, James Szilagyi, and Hanley R. Booth appeal from a decision of the Montana State Office, Bureau of Land Management (BLM), rejecting offer M 42689 to lease oil and gas on parcel MT #330. In the public drawing for noncompetitive oil and gas leases, first priority for parcel MT #330 was awarded to appellant Lawrence T. Loftus, who listed James Szilagyi and Hanley R. Booth as the other parties in interest.

Appellants submitted with the drawing entry card (DEC) a statement as required by 43 CFR 3102.7, signed by all three appellants, which set forth "[t]he nature and extent of the interest of each in the offer." The document stated: "The interest of each of the following four members of this association is an equal amount (twenty-five percent each)." Only three persons, however, signed the document. BLM rejected the offer on the ground that the statement was not in compliance with 43 CFR 3102.7, since the identity and interest of the fourth person was not disclosed. Appellants filed a timely appeal in accordance with 43 CFR Part 4.

Appellants assert that there were only three parties, involved in this offer and that a clerical error had occurred in the reference to four parties. They explain that originally an agreement had existed between the appellants and one Eric Pick, 1/ in which all four of the partners had an interest of 25 percent. In November 1978 Pick moved to Florida and terminated his association with the appellants. Appellants instructed a secretary to delete the name of the fourth party and revise the interest amounts and number of persons participating. All corrections apparently were not made. Appellants argue that the statement does indicate that each party should receive an equal amount; that the statement is unambiguous; that it needs no additional information to construe it; and that a reasonable person could detect the obvious error.

[1, 2] The Board examined similar contentions in Mildred A. Moss, 28 IBLA 364 (1977), aff'd, Moss v. Andrus, Civil No. 78-1050 (10th Cir. Sept. 20, 1978). In Moss, the offeror had indicated on the DEC that four other parties had an interest in the offer. Statements of the other four parties detailing their respective interests (20 per cent each) were timely filed with BLM. No statement was filed on behalf of the offeror. On appeal from rejection of their offer, appellants argued that it was clear from the documents submitted that the offeror's interest was also 20 percent.

The Board rejected this argument, noting:

> None of the documents show any indication of the percentum or nature of the interest to be received by Mildred Moss, or the nature of whatever agreement she may have with other offerors. A not unreasonable guess might be that Mildred Moss is to receive a 20-percent interest in the application, in the same manner as the other offerors. However, BLM employees are not authorized to guess at the

1/ Actually, the original four parties were Loftus, Booth, Pick, and one Floyd Wiggins. In August of 1978 Wiggins was replaced by appellant Szilagyi.

> meaning of ambiguous agreement or to "fill in the blanks" of deficient oil and gas lease offers. Mountain Fuel Supply Co., [13 IBLA 85 (1973)]. To do so would deprive the first qualified offeror (that is, a subsequently drawn entry, correctly completed) of his right to the lease and, therefore, is not permissible. Harry Reich, 27 IBLA 123, 129 (1976); Mountain Fuel Supply Co., supra. [Emphasis in original.]

28 IBLA at 367.

In the instant case, appellants argue that their statement of interests is unambiguous. The statement is only unambiguous, however, if we ignore the fact that it states the four offerors each have a 25 percent interest in the application. While it may be reasonable to assume that appellants meant to say that the three offerors each had a 33-1/3 percent interest in the application, other possibilities are not negated by their statement. Thus, a fourth person could have existed whose name was inadvertently omitted from the statement. Alternatively, if only three individuals had an interest in the offer, it is possible that one had a 50 percent interest, while the other two had individual interests of 25 percent. It is only through the subsequent submissions of the appellants that the ambiguity created by their statement of interests is erased.

Appellants' subsequent explanation, however, cannot be utilized to cure the ambiguity. As this Board has noted many times, the requirement that the statement of interest be filed within 15 days of the filing of the offer is mandatory and cannot be waived. See, e.g., Harry Reich, supra; James D. Caddell, 25 IBLA 274 (1976). Subsequent information can only "cure" defects to the extent that no intervening rights have arisen. In the simultaneous drawing system, however, the rights of those drawn with second and third priority, by definition, intervene upon the failure of a first drawn offeror to comply with mandatory requirements of the regulations. Moreover, 43 CFR 3112.5-1 requires a new drawing to be held if all offers drawn with priority are found to be unqualified. An ambiguous statement of interest which is not amenable to correction within the confines of that statement does not meet the mandatory requirements of 43 CFR 3102.7, and must be rejected.

BLM properly rejected appellant's offer to lease for noncompliance with 43 CFR 3102.7. Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Joan B. Thompson
Administrative Judge